



Entered on Docket
May 18, 2006

Hon. Linda B. Riegler
United States Bankruptcy Judge

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Proposed Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

Date: N/A
Time: N/A

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

STIPULATION AND ORDER GRANTING EMERGENCY MOTION FOR ORDER TO COMPEL FIDELITY NATIONAL TITLE INSURANCE COMPANY TO MAKE DISBURSEMENTS FROM LOAN FUNDS BEING HELD BY FIDELITY AS DISBURSEMENT AGENT [AFFECTS DEBTOR USA COMMERCIAL MORTGAGE COMPANY]

Debtor and Debtor-in-Possession USA Commercial Mortgage Company ("Debtor" or "USA"), by and through its counsel, Jeanette E. McPherson, Esq. of the Schwartz & McPherson Law Firm, and Fidelity National Title Insurance Company ("Fidelity"), by and through its counsel, Robert Bozarth, Esq., hereby stipulate and agree as follows:

WHEREAS, the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code on April 13, 2006 (the "Petition Date"), and the Debtor continues to operate its business and possess its property as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

WHEREAS, on May 9, 2006, Debtor filed its Emergency Motion To Compel Fidelity National Title Insurance Company To Make Disbursements From Loan Funds Being Held By Fidelity As Disbursement Agent (the "Emergency Motion").

WHEREAS, pursuant to prepetition contractual arrangements (the "Fidelity Construction Disbursement Agreements") between Fidelity, the Debtor as Servicer, and the borrowers outlined below (the "Borrowers"), Fidelity is currently acting as the disbursement agent for the Debtor and for the Borrowers on the following five loans (the "Five Loans") originated by Debtor as Servicer and made to the following Borrowers: (a) Meadow Creek Partners, LLC (the "Meadow Creek Loan"); (b) Binford Medical Investors, LLC (the "Binford Medical Loan"); (c) ComVest Capital (the "ComVest Capital Loan"); (d) Palm Harbor One (the "Palm Harbor One Loan"); and (e) Brookmere, LLC and Lord & Essex Matteson, LLC (the "Brookmere Loan").

WHEREAS, pursuant to the terms of the Fidelity Construction Disbursement Agreements,

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1 Debtor as Servicer forwarded to Fidelity prior to the Petition Date certain loan funds intended for
 2 construction funding and for interest reserves for the Five Loans, some of which funds Fidelity is
 3 still holding.

4 **WHEREAS**, Fidelity stopped making disbursements on the Five Loans upon the filing of
 5 Debtor's Chapter 11 bankruptcy petition.

6 **WHEREAS**, pursuant to the Emergency Motion, the Debtor asserts that it is authorized
 7 under the terms of the Loan Servicing Agreements between the Debtor as Servicer and the various
 8 investors for the Five Loans that are described in the Emergency Motion (the "Investor Servicing
 9 Agreements") to provide periodic disbursement authorizations to Fidelity for construction funding
 10 on the Five Loans and for the payment of interest payments on the Five Loans from the interest
 11 reserves being held by Fidelity consistent with the disbursement terms of the executed loan
 12 documents for the Five Loans.

13 **WHEREAS**, pursuant to the Emergency Motion, the Debtor asserts that providing these
 14 disbursement authorizations to Fidelity is in the ordinary course of Debtor's business under
 15 Section 363(c)(1) of the Bankruptcy Code, and that the Court also has the power under Section
 16 105(a) of the Bankruptcy Code to order Fidelity to begin following disbursement authorizations
 17 and directions that it receives from the Debtor on the Five Loans.

18 **WHEREAS**, Fidelity consents to the relief requested by the Debtor in the Emergency
 19 Motion.

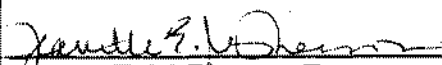
20 **NOW, THEREFORE**, in consideration of the foregoing, the Debtor and Fidelity agree as
 21 follows:

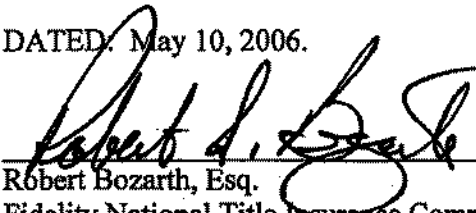
- 22 1. The foregoing recitals are incorporated herein in full.
- 23 2. The Debtor, as Servicer, is authorized to continue to exercise its powers on behalf
 24 of the investors under the Investor Servicing Agreements and to continue to provide to Fidelity the
 25 necessary disbursement instructions and authorizations for the Five Loans that are consistent with
 26 the terms of the loan documents for the Five Loans.
- 27 3. In those cases where Debtor as Servicer has approved the Request for
 28 Disbursement and sent to Fidelity the required Instructions to Disburse, and Fidelity has

1 previously received the disbursement amount from Debtor as Servicer, then Fidelity shall
2 immediately make the required disbursements on the Five Loans both to the Borrowers for
3 construction funding and to the Debtor as Servicer for interest payments on the Five Loans from
4 the interest reserves being held by Fidelity.

5 DATED: May 10, 2006

DATED: May 10, 2006.

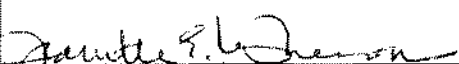
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7 
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10 Debtors-in-Possession


Robert Bozarth, Esq.
Fidelity National Title Insurance Company
Senior Vice President and NTS Counsel
Glen Forest Dr., Suite 403
Richmond, VA 23226

11 **ORDER**

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13 **IT IS SO ORDERED.**

14 Submitted By:

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18 Jeanette E. McPherson, Esq.
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20 Proposed Attorneys for Debtors and
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